SUPREME COURT, U. S.

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Supreme Court of the United States

OCTOBER TERM, 1968

No. 410

JOSEPH M. DAVID,

Petitioner,

v.

JUNE STRELECKI, DIRECTOR OF DIVISION OF MOTOR VEHICLES, STATE OF NEW JERSEY,

Respondent.

BRIEF AND APPENDIX ON BEHALF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

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COUNTERSTATEMENT OF QUESTION PRESENTED.

Does the right against self incrimination contained in the fifth amendment to the Federal Constitution and secured by this Court's decision in *Miranda* v. *Arizona*, 384 U. S. 436 (1966) apply to an administrative hearing, solely civil in nature, held to determine whether a driver's license should be suspended?

COUNTERSTATEMENT OF THE CASE.

Petitioner, Joseph M. David (hereinafter sometimes "David") seeks a writ of certiorari to review the judgment of the New Jersey Supreme Court (*David* v. *Strelecki*, 51 N. J. 563 (1968)) affirming the decision and order dated February 24, 1967 of respondent June Strelecki, the Director of the Division of Motor Vehicles, State of New Jersey, suspending his driving privileges for two years.

Early in the morning of August 24, 1965, David and his passenger, one Charles Teti, were traveling in David's car on a county road near Somers Point in Atlantic County, New Jersey. The car missed a sharp curve, left the road, tore away a twenty-foot section of guardrail, rolled down an embankment, and came to rest on its side. The accident killed Teti (P40a-30 to P42a-14).[1]

Prior to the accident, David, Teti and a third youth had been cruising around in David's car in the Bridgeton area (R2a). Between 10:30 p. m., August 23 and 2:20 a. m. August 24, 1965, David and his companions had shared a "six-pack" of beer and had stopped at two taverns, where they drank some more beer (R3a). At the second tavern, they became involved in a disturbance which required the Somers Point Police to be called

[1] Citations to the facts recited herein, unless otherwise indicated, are to the appendix which the petitioner submitted to the Superior Court of New Jersey, Appellate Division and which he filed with this Court as a part of the record herein (Pb2).

(P68a-30 to 40). Sergeant Bader responded to the call and brought the boys to City Hall where, after some discussion, he released them (P69a-28 to 70a-5). After leaving Sergeant Bader, it appears that David proceeded to take his companions home. He dropped the first off at his home and was heading toward Teti's home when the accident occurred (R2a).

After the accident, David and Teti's corpse were taken by ambulance to Somers Point Hospital. David arrived at the hospital sometime after 2:45 a. m. He was under sedation and sleeping (P48a-3 to 10) when, at approximately 5:00 a. m., Trooper Porter of the State Police arrived to question him (P18a). During the course of the questioning David, who was "a bit groggy" (P48a-11, 12)—whether from drink, from sedation, from the accident or from a combination of all three—told Trooper Porter that he was going "over 90 miles an hour at the time of the accident" (Pb44a-20 to 23).

Apparently David was not too badly injured, for he was discharged from the hospital the morning of the following day, August 25, 1965 (Pb57a-20 to 23). Directly upon David's release from the hospital, State Police Detective Heilfurth questioned him. In his three-page, signed statement, David admitted that he was exceeding the speed limit just before the accident occurred (R2a).

David was subsequently indicted under N. J. S. 2A:113–9, death by auto, a misdemeanor punishable by imprisonment for a term not to exceed three years, a maximum fine of $1,000, or both. Prior to trial, David successfully moved in county court to suppress as evidence his statements made before Trooper Porter and Detective Heilfurth (P29a). The court regarded both statements as having been procured in violation of the requirements set forth in *Miranda* v. *Arizona*, 384 U. S. 436 (1966). Thereafter, the state moved to dismiss the indictment for lack of evidence (P30a).

A short time before David's successful motion to suppress, the respondent commenced administrative proceedings to suspend his driving privileges (N. J. S. A. 39:5–30; P30a). As a basis therefor, the respondent alleged that the accident and Teti's death resulted from David's careless driving—brought about in some measure by his consumption of alcoholic beverages—in a manner so as to endanger life or property and from his failure to keep to the right of the roadway (N. J. S. A. 39:4–97; 39:4–82).

David requested and received a hearing on the proposal to suspend his license. During the course thereof, Trooper Porter testified concerning the statement that David made to him at the hsopital (P43a-35 to 44a-23). David's written statement which Detective Heilfurth took was also admitted into evidence (P59a-40 to 43; see appendix hereto R1a-5a). In each instance, the evidence was received over David's objection (P43a-40 to 44a-3; P58a-10 to 18). He maintained that just as *Miranda* required the county court to exclude this evidence in a criminal proceeding resulting from the accident, it equally required the respondent to exclude it in a related administrative proceeding.

As we have noted, the respondent, by decision and order dated February 24, 1967, then suspended David's driving privilege for two years (P102a-105a). Trooper Porter's evidence and David's statement given to Detective Heilfurth constituted major factors in the respondent's decision (P103a-35 to 39; P103a-39 to 104a-4).

David appealed the respondent's order to the Superior Court, Appellate Division pursuant to R. R. 4:88–8. The Appellate Division reversed, holding that Trooper Porter's testimony concerning David's statement to him at the hospital should have been excluded under a doctrine of "fundamental fairness" (97 N. J. Super. at 369), and that the probative value of David's statement to Heilfurth was outweighed by other evidence at the hearing (97 N. J. Super. at 371). The majority decision expressly refused to decide whether *Miranda* should apply to administrative proceed-

ings (97 N. J. Super. at 371, 372), basing its decision—after holding that the hearing officer should have rejected Trooper Porter's testimony—on the conclusion that respondent's determination and order were not supported by substantial record evidence (97 N. J. Super. at 372).

Judge Carton wrote a dissenting opinion which held that David's statement to Heilfurth—the opinion expressly did not consider Porter's testimony concerning the statement which David made to him—together with other evidence introduced at the hearing warranted the respondent's decision and order. Unlike the majority, Judge Carton faced the *Miranda* issue and squarely held that its doctrine had no application to administrative proceedings (97 N. J. Super. at 381).

The Supreme Court reversed the Appellate Division, largely on the basis of Judge Carton's dissent. It too squarely held that *Miranda* has no application to the administrative process which, unlike the criminal process, contemplates no punitive sanctions (51 N. J. at 565, 566).

ARGUMENT.

POINT I.

The petition herein utterly fails to present reasons why this Court should grant the relief requested therein.

The petition herein presented serves as an excellent example of the ability of competent counsel to raise a non-issue. Essentially, petitioner urges that the exclusionary rule of *Miranda* v. *Arizona*, 384 U. S. 436 (1966) should be applied to evidence offered in an administrative proceeding held to determine whether a driver's license should be suspended.

In the circumstances of the within petition, it is important to note that the purpose of the *Miranda* rule is to secure the fifth amendment privilege against self incrimination which, by its very terms, applies only to criminal cases.[2]

The background of the *Miranda* rule is found in criminal jurisprudence (484 U. S. at 439). This Court discerned a history of in-custody interrogation practice which—at the very least—diminished the individual's ability effectively to avail himself of the privilege against self incrimination. In pp. 445-446 of its decision, and particularly in nn. 5 and 6 therein, we find examples of the interrogation practices against which the rule is directed. These practices took place in the circumstances of criminal investigations in which the police sought to obtain a confession from one suspected of committing the crime under investigation. Only in this context does the *Miranda* rule have relevance, for

[2] "No person . . . shall be compelled *in any criminal case* to be a witness against himself . . . " (emphasis ours). Thus, the right against self incrimination refers to the compulsion exerted upon an individual to provide evidence which will expose him to criminal penalties, e. g., fine or imprisonment. Petitioner's argument is that somehow the right against self incrimination inheres to a motor vehicle proceeding—despite the fact that such a proceeding is hardly a criminal case—and that the *Miranda* rule must be applied to the administrative hearings held therein in order to safeguard that right.

its purpose is to discourage, if not to forestall, the practices which prompted its creation.[3]

The rule operates to exclude as evidence, in criminal prosecutions, any confession or admission procured in the absence of the warnings which the rule requires to be given.

It is plain that the *Miranda* rule has no application to the administrative proceedings resulting in the suspension of petitioner's driver's license. The application of the rule in the criminal proceedings against him serves clearly to illustrate this point. Petitioner successfully moved, prior to trial on the indictment rendered against him under N. J. S. 2A:113–9, death by auto, to suppress the statements made to Trooper Porter and taken by Detective Heilfurth. In this context, petitioner's statements were self incriminatory, in that they provided evidence which could have led to his conviction of a misdemeanor which, in New Jersey, is an indictable offense calling for a maximum prison term of three years, a fine of $1,000, or both.

However, when we view the administrative proceedings to which petitioner was subject, we see an entirely different story. Surely, by no stretch of the imagination could these proceedings be regarded as a criminal case. They did not expose petitioner to imprisonment or a fine; they merely resulted in a two year suspension of his driving privileges. The purpose behind a suspension is temporarily to rid New Jersey's highways—for a period necessary to reform his driving habits—of a driver whose conduct endangers other drivers and himself. Quite obviously, the sole purpose behind a suspension—unlike a fine or an imprisonment—is not penal. *Cresse* v. *Parsekian*, 81 N. J. Super. 536 (App. Div. 1964) *aff'd*, 43 N. J. 326 (1964).

Petitioner's suggestion that a rule designed to safeguard an individual's right not to be "compelled in any criminal

[3] Thus, *Miranda* is a response to an empirically perceived problem. We seriously doubt that research would reveal many—if any—situations in which police officers or motor vehicle inspectors "sweated" drivers to procure admissions for use in administrative proceedings looking toward the suspension of the offender's driver's license.

case to be a witness against himself" be applied to this motor vehicle proceeding, entirely civil in nature, is frivolous.

Moreover, the decisions following *Miranda*, which petitioner cites in his brief, are entirely irrelevant to the position which he maintains. He makes particular reference to the fifth amendment cases such as *Grosso* v. *United States*, 390 U. S. 62 (1968); *Haynes* v. *United States*, 390 U. S. 85 (1968); *Marchetti* v. *United States*, 390 U. S. 39 (1968); *Mathis* v. *United States*, 391 U. S. 1 (1968); *Gardner* v. *Broderick*, 392 U. S. 273 (1968) and *Spivack* v. *Klein*, 385 U. S. 511, 17 L. Ed. 2d 574 (1967). He could also have included *Garrity* v. *New Jersey*, 385 U. S. 493 (1967). These decisions hold that the state cannot compel the individual to choose "between the rock and whirlpool",[4] in that it cannot impose a penalty upon the exercise of the privilege against self incrimination.

Accordingly, the state may not compel an individual to waive his right against self incrimination by subjecting him to a criminal penalty if he does not (*Grosso* v. *United States, supra; Haynes* v. *United States, supra; Marchetti* v. *United States, supra; Mathis* v. *United States, supra).* Nor may it compel a waiver of the right by impairing the person's ability to earn a living in his chosen profession if he asserts it *(Gardner* v. *Broderick, supra; Spivack* v. *Klein, supra; Garrity* v. *New Jersey, supra).*

The decisions which petitioner cites would have relevance only if New Jersey provided that a driver who refused to make a statement to the police in circumstances where the statement was incriminatory and the privilege was thus properly invoked (*cf., Spivack* v. *Klein, supra,* at 517-518) was subject to revocation or suspension of his license. However, no such statute or practice exists in New Jersey.

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[4] *Garrity* v. *New Jersey, supra,* at 498-499, citing *Union Pac. R. R. Co.* v. *Public Service Commission,* 248 U. S. 67 (1918).

Thus, petitioner's self incrimination argument is patently hollow. The only position remaining to him is that the admission of his statements at the administrative hearing violated a concept of fundamental fairness secured through the due process clause of the fourteenth amendment. (*cf.*, *Bechler* v. *Parsekian*, 36 N. J. 242, 256 (1961)). In this context, we point out that nowhere in the proceedings below did he urge that his oral statement to Trooper Porter and the written statement to Detective Heilfurth were not voluntary. Petitioner seems to imply that they were not by claiming that both statements were made while he was under sedation.

Trooper Porter interviewed the petitioner approximately 2½ hours after the accident occurred, after he was sedated and thereafter awakened. The mere fact that petitioner had recently been sedated prior to making the statement is not, in and of itself, sufficient to exclude it as involuntary. *State* v. *Wade*, 40 N. J. 27 (1963); *State* v. *Wise*, 19 N. J. 59 (1955).

The written statement which petitioner gave to Detective Heilfurth is coherent, initialed and signed. It was made after petitioner was discharged from the hospital. While the statement recites that petitioner received a "needle and a pill" (R5a) there is no indication when these medicines were administered or what they were. For aught the record shows, they were mild tranquilizers. The claim of a "needle and a pill" may relate to the sedation which petitioner received shortly after he was admitted to the hospital some thirty hours before his statement was taken.

We further note that Detective Heilfurth gave petitioner all the warnings which *Miranda* requires, save the one which would have informed him that, if he was unable to retain an attorney, one would be appointed to represent him during the course of the questioning (R1a). Since the petitioner has been represented by retained counsel throughout, even up to and including this Court, we

wonder what practical relevance this omission has to the voluntariness of his statement to Detective Heilfurth. In any event, there can be no doubt whatsoever that petitioner's statement to Detective Heilfurth was entirely a voluntary act and, therefore, that its admission in the administrative proceedings did not result in any unfairness, fundamental or otherwise.

CONCLUSION.

Since the decision of the New Jersey Supreme Court is in accord with both the applicable decisions of this Court and the United States Constitution, respondent respectfully submits that the within petition for a writ of certiorari to the Supreme Court of New Jersey should be denied.

Respectfully submitted,

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